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## PATENT APPLICATION

ATTORNEY DOCKET NO. 10008147 -1IN THE  
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Cipriano A. Santos et al

Confirmation No.: 4356

Application No.: 09/851514

Examiner: Arthur D. Duran

Filing Date: May 08, 2001

Group Art Unit: 3622

Title: Method And System Of Determining Differential Promotion Allocation

Mail Stop Appeal Brief - Patents  
Commissioner For Patents  
PO Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL OF REPLY BRIEFTransmitted herewith is the Reply Brief with respect to the Examiner's Answer mailed on Jan 23 2006.

This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new ground rejection.)

No fee is required for filing of this Reply Brief.

If any fees are required please charge Deposit Account 08-2025.

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Respectfully submitted,

Cipriano A. Santos et al

By 

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Date: March 14 2006

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Rev 10/05 (ReplyBri)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants:	Cipriano Santos, et al.	Examiner:	Arthur D. Duran
Serial No.:	09/851,514	Group Art Unit:	3622
Filed:	May 8, 2001	Docket No.:	10008147-1
Title:	Method and System of Determining Differential Promotion Allocations		

**REPLY APPEAL BRIEF UNDER 37 C.F.R. § 41.41**

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Reply Appeal Brief is filed in response to Examiner's Answer Brief dated January 23, 2006.

**AUTHORIZATION TO DEBIT ACCOUNT**

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's deposit account no. 08-2025.

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Applicants provide responses to some of the issues argued in the Examiner's Answer Brief dated January 23, 2006. Applicants address comments to each of the six different claim groups.

**Claims 1, 5-8, 10-15, 17-18, and 20**

**A. Hindsight Construction (Picking and Choosing)**

Applicants reiterate that the Office Action makes the following admission regarding the deficiencies of Gerace and Applicants' claims:

Gerace does not explicitly disclose automatically detecting contradictions between said constraints and other aspects of said entered management information;  
automatically identifying resolutions to said contradictions, and implementing said resolutions in said campaign plan. (See Examiner Answer Brief at p. 7)

Applicants agree with this admission. Thus, the issues are: Does Harhen teach or suggest these claim limitations, and is there a suggestion or motivation to combine and/or modify Gerace and Harhen. The answers to these questions are "no."

First, the recitations of claim 1 must be kept in the proper context. Claim 1 is directed to a method of determining promotion allocation among prospective customers. In other words, claim 1 is a method for determining how to allocate promotions to prospective purchasers/customers. By contrast, Harhen does not teach or suggest that his embodiments are applicable for determining promotion allocation among prospective customers. In other words, Harhen never suggests that his embodiments are extendible or applicable for determining how to allocate promotions to prospective purchasers/customers. Harhen teaches embodiments for enterprise information modeling. Enterprise modeling, however, is a vast and enormous undertaking with a multitude of different phases (see Harhen's figures). Nowhere in Harhen's discussion of enterprise

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modeling does he state or even suggest that his embodiments as applied to claim 1 are applicable to determining how to allocate or market promotions to prospective purchasers/customers.

Second, Applicants respectfully assert that the Examiner is using knowledge of Applicants' invention and then performing hindsight reconstruction to show the various claim elements. In other words, the Office Action is picking and choosing teachings from Harhen and then using knowledge of Applicants' invention to re-construct Applicants' claims. On this subject, the case law is clear: One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

**B. Missing Element: "Implementing Resolutions in Campaign Plan"**

Claim 1 recites that the campaign plan automatically detects contradictions, automatically identifies resolutions, and then implants the resolutions in the campaign plan.<sup>1</sup> Again, the Examiner admits that Gerace does not teach these recitations. So, the issue is: Does Harhen teach or suggest these recitations? Harhen does not.

Applicants respectfully ask the Board of Appeals to read the recitations of claim 1 in context of the actual claim language. Claim 1 is a method for determining how to market or allocate promotions to prospective purchasers/customers. More specifically, claim 1 recites that the resolutions to the contradictions are implemented in the campaign plan. Applicants stress that the resolutions are implemented in the campaign plan to prospective customers. The Examiner already admitted that Gerace does not teach or suggest this recitation. Applicants strongly argue that Harhen, alone or in combination with Gerace, does not teach or suggest this recitation either. Harhen does discuss different facets of enterprise modeling. Harhen, however, never suggests a campaign plan to customers that automatically detects contradictions, automatically identifies resolutions, and then implants the resolutions in a marketing plan or campaign plan as recited in the independent claims.

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<sup>1</sup> "automatically detecting contradictions between said constraints and other aspects of said entered management information, automatically identifying resolutions to said contradictions, and implementing said resolutions in said campaign plan."

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#### Claim 2

In the Examiner's Answer Brief, the Examiner cites several new locations in Harhen to argue that Harhen teaches "automatically determining a guideline for resolving a trade-off between said two business management objectives" as recited in claim 2. Applicants respectfully ask the Board of Appeals to read the cited sections in Harhen and ask this question: Are the cited sections in Harhen applicable for determining how to allocate promotions to prospective purchasers/customers in a marketing campaign? Applicants respectfully assert that Harhen is not. In other words, Applicants argue that the Examiner is citing sections of Harhen out of context. Claims 1 and 2 are directed to determining how to allocate promotions to prospective purchasers/customers. The recitations of dependent claim 2 (example, "automatically determining a guideline for resolving a trade-off between said two business management objectives") must be read in the context of the actual language of the claim. Harhen, alone or in combination with Gerace, does not teach or suggest determining how to allocate promotions to prospective purchasers/customers in a marketing campaign.

#### Claim 4

In the Examiner's Answer Brief, the Examiner cites several new locations in Harhen and Gerace to allegedly teach or suggest the elements of claim 4, namely "generating a report which identifies the contradictions and resolutions." The Examiner is merely identifying locations in the art that mention the word "report." These cited locations, though, never suggest that these reports are used for identifying the contradiction and resolutions in a campaign plan for customers. Again, Applicants respectfully argue that the Examiner is taking words in Harhen and Gerace out of context. There must be a suggestion or motivation to modify the art (i.e., the mention of the word "report") to teach or suggest that such reports identify the contradictions and resolutions in a campaign plan (see recitations in claim 4). Such motivation or suggestion does not exist.

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### **Claim 9**

Claim 9 recites entering market data that includes null promotion data. This term is defined in Applicants' specification (see p. 6, lines 28-29). In order to obviate this recitation, the Examiner found the word "null" in Gerace. Gerace, however, is using the word "null" in the context of performing a regression analysis. By contrast, claim 9 is reciting "null promotion data." **These two concepts are completely different.** Again, Applicants respectfully argue that the Examiner is taking words and phrases in Harhen and Gerace completely out of context to allegedly teach or suggest the recitations of the claims.

### **Claim 16**

Claim 16 recites an optimization engine that detects inconsistencies with the management information in achieving business objectives and a frontier engine that recognizes these inconsistencies and **determines trade-offs**. First, Applicants argue that that the Examiner's citations to Harhen are not in context. In other words, Harhen is not directed to marketing promotion campaign to customers. The Examiner is picking and choosing phrases out-of-context and applying them to Gerace with no suggestion or motivation to do so. Second, even assuming *arguendo* that Gerace and Harhen are properly combinable and/or modifiable (which they are not), Harhen does not teach engines that detect inconsistencies in management information and determine trade-offs. According to the Merriam-Webster dictionary, the word "trade-off" means:

- 1 : a balancing of factors all of which are not attainable at the same time <the education versus experience *trade-off* which governs personnel practices -- H. S. White>
- 2 : a giving up of one thing in return for another : **EXCHANGE**  
- trade off *transitive verb*

The Examiner has not cited a single location in Harhen that teaches or suggests "balancing of factors" in a contradiction of management information for marketing promotional campaigns to customers.

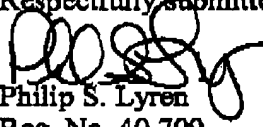
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### Claim 19

Applicants reiterate that the Examiner has yet to cite any location in Gerace or Herace that teaches or suggests that the contradictions are mutually exclusive as recited in claim 19. The Examiner argues that the terms "contradiction" and "mutually exclusive" are the same. This supposition is not true. The Examiner further provides an example in the Examiner's Answer Brief: If George is in Chicago, he cannot also be in New York; therefore, the occurrence of George in both Chicago and New York is mutually exclusive. Applicants respectfully argue that the application of this logic is flawed and inaccurate.

First, to one skilled in the art, the terms "mutually exclusive" and "contradiction" have very different meanings. Two events or groups are mutually exclusive if they have no events in common. By contrast, two events or groups can have some commonality and some contradictions. These latter events contain contradictions, but are not mutually exclusive. The Examiner uses a simple analogy of George being in New York or Chicago, but this analogy does not coincide with the definition of mutually exclusive as this term is known in the art. Further, the Examiner has provided no basis whatsoever in the art of record to support his supposition that the terms "mutually exclusive" and "contradiction" are the same according to one skilled in the art.

Respectfully submitted,

  
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#### CERTIFICATE UNDER 37 C.F.R. 1.8

The undersigned hereby certifies that this paper or papers, as described herein, is being transmitted to the United States Patent and Trademark Office facsimile number 571-273-8300 on this 14th day of March, 2006.

By   
Name: Carrie McKerley